

STATE OF CALIFORNIA  
**DEPARTMENT OF INSURANCE**  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, California 95814

**NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING**

**January 1, 2010 Workers' Compensation Claims Cost Benchmark  
and Pure Premium Rates**

**File No. REG-2009-00022**

**Notice Date: August 24, 2009**

Approval of the Workers' Compensation Claims Cost Benchmark and Advisory Pure Premium Rates and proposed revisions to the Insurance Commissioner's Regulations pertaining to the Classification of Risks; Recording and Reporting of Data; Statistical Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates to be effective January 1, 2010.

**NOTICE AND SUBJECT OF PUBLIC HEARING**

Notice is hereby given that the Insurance Commissioner will hold a public hearing in response to a filing, submitted on August 18, 2009, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB") to consider the following:

- Approval of the Workers' Compensation Claims Cost Benchmark and advisory pure premium rates developed by the WCIRB as a rating organization on behalf of its member insurers.
- Approval of amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.
- Approval of an amendment to the Miscellaneous Regulations for the Recording and Reporting of Data as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.
- Approval of amendments to the California Workers' Compensation Experience Rating Plan—1995 as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.

## **HEARING DATE AND LOCATION**

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

**October 6, 2009 – 9:30 AM  
California Department of Insurance  
22nd Floor Hearing Room  
45 Fremont Street  
San Francisco, California**

## **AUTHORITY AND REFERENCE**

### Uniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations are promulgated by the Insurance Commissioner pursuant to the authority granted by Insurance Code Section 11734.

### Workers' Compensation Claims Cost Benchmark and Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for each employee classification on behalf of its member insurers for submission to the Insurance Commissioner for issuance or approval. The WCIRB also submits an overall rate adjustment that measures the change in costs to the California worker's compensation system, designated by the Commissioner as the Workers' Compensation Claims Cost Benchmark, in addition to the changes to the pure premium rates for each classification.

The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the Insurance Commissioner to require insurers to use the Claims Cost Benchmark or pure premium rates issued or approved by the Insurance Commissioner. Accordingly, the Claims Cost Benchmark and pure premium rates issued or approved by the Insurance Commissioner are an estimate of the workers' compensation claims costs and are advisory only. However, all insurers must submit their rates for review to the Insurance Commissioner prior to their use, and an insurer's filed workers' compensation rates are public information.

## **INFORMATIVE DIGEST**

Pursuant to Insurance Code Sections 11734 and 11751.5, the Insurance Commissioner has designated the WCIRB as his statistical agent. As the designated statistical agent, the WCIRB has developed and submitted for the Insurance Commissioner's approval pure premium rates and revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and California Workers' Compensation Experience Rating Plan—1995 for approval. The pure premium rates will be advisory only; however, adherence to the regulations contained in the California Workers' Compensation Uniform Statistical Reporting Plan—1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995 is mandatory. With regard to the standard classification system developed by the designated rating organization and approved by the Insurance Commissioner, Insurance Code Section 11734 provides that an insurer may develop its own classification system if it is filed with the Insurance Commissioner 30 days prior to its use and is not disapproved by the Insurance Commissioner for failure to demonstrate that the data produced by the insurer's classification system can be reported consistently with the California Workers' Compensation Uniform Statistical Reporting Plan—1995 or the Standard Classification System developed by the WCIRB and approved by the Insurance Commissioner.

The pure premium rates recommended by the WCIRB to be effective January 1, 2010, as well as amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995 are detailed in the WCIRB's filing and summarized below.

## **APPROVE CLAIMS COST BENCHMARK AND PURE PREMIUM RATES**

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the Insurance Commissioner to be effective January 1, 2010 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2010. The corresponding overall pure premium rate level change or claims cost benchmark is 22.8% greater than the January 1, 2009 claims cost benchmark approved by the Insurance Commissioner.

In addition, the WCIRB advised that it will be reviewing accident year experience valued as of June 30, 2009 once it is received and, if appropriate, will amend the pure premium rates proposed in its filing prior to the public hearing. Further, the WCIRB advised that if legislative or regulatory changes are adopted or a decision is issued in the Ogilvie v. City and County of San Francisco and Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District cases prior to the public hearing on this filing, the WCIRB will evaluate the estimated cost impact of these actions and, to the extent appropriate, modify the pure premium rates proposed in its filing as well as the approved January 1, 2009 pure premium rates with respect to policies with anniversary rating dates on or after January 1, 2009 that are outstanding as of January 1, 2010.

The proposed 22.8% rate increase is based on (1) insurer losses incurred during 2008 and prior accident years valued as of March 31, 2009; (2) insurer loss adjustment expenses for 2008 and prior years; (3) the cost impact of two recent Workers' Compensation Appeals Board (WCAB) en banc decisions; (4) the experience rating off-balance correction factor; and (5) classification payroll and loss experience reported for policies issued during 2006 and prior years.

## **AMEND THE CALIFORNIA WORKERS' COMPENSATION UNIFORM STATISTICAL REPORTING PLAN—1995**

The WCIRB recommends that the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 become effective January 1, 2010 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2010, except as otherwise noted.

- Amend the policy reporting requirements to no longer require a social security number to be reported in lieu of the FEIN, when the policyholder's FEIN is unavailable due to privacy concerns related to social security numbers.
- Amend the minimum and maximum annual payroll for executive officers, partners, individual employers, and members of a limited liability company to increase the maximum from \$94,900 to 97,500 and the minimum from \$36,400 to \$37,700, as well as to other payroll limitations relevant to specific classifications (e.g., athletic teams, entertainment classifications, etc.) to reflect wage inflation since the last time these amounts were amended on January 1, 2009.
- Amend Classification 7365, *Taxicab Operations — all employees*, to increase the minimum annual payroll per taxicab from \$26,500 per year to \$27,300 to reflect wage inflation since the last time the amount was adjusted on January 1, 2009.
- Amend the Standard Classification System to reflect the establishment of *Food Packaging and Processing* as an industry group.
- Establish Classification 2123, *Fruit or Vegetable Processing – fresh – ready-to-eat*. The “ready-to-eat” produce industry constitutes a distinct and identifiable industry of sufficient size to generate a statistically credible pure premium rate. Also amend several related classifications for clarity and consistency.
- Establish Classification 0096, *Nut Hulling, Shelling or Processing*. Nut processing constitutes a distinct and identifiable industry of sufficient size to generate a statistically credible pure premium rate.

- Establish Classification 7227, *Automobile or Automobile Truck Towing, Roadside Assistance or Freeway Service Patrol – for vehicles not owned by employer*, and amend several related classifications for clarity and consistency. Towing, Roadside Assistance and Freeway Service Patrol constitutes a distinct and identifiable industry of sufficient size to generate a statistically credible pure premium rate.
- Amend the unit statistical reporting requirements to eliminate the requirement that social security numbers be reported on each claim, due to privacy concerns, to be effective on all claims required to be valued on or after January 1, 2010.
- Amend the unit statistical reporting requirements to conform to the Workers Compensation Insurance Organizations' *WCIO Workers Compensation Data Specifications Manual* for the electronic reporting of unit statistical report data, as applicable in California.
- Amend Appendix IV to eliminate the Supplemental Loss Report form and all references to this form.
- Amend for clarity and consistency.

In addition, the Insurance Commissioner's Decision on the WCIRB's July 1, 2009 pure premium rate filing directed the WCIRB to propose rule changes, effective January 1, 2010, to require that the cost of medical cost containment programs be reported as allocated loss adjustment expense instead of medical loss and be separately reported so as to be able to be monitored. The WCIRB is in the process of finalizing the proposed amendments to the USRP definition and reporting requirements related to medical cost containment and will submit those proposed amendments prior to the public hearing on its filing. However, the WCIRB has advised that in light of the complexity of the insurer system modifications needed to facilitate the new reporting requirements, the WCIRB may propose that the amendments become effective January 1, 2011.

If amendments to require that the cost of medical cost containment programs be reported as allocated loss adjustment expense instead of medical loss and be separately reported so as to be able to be monitored do occur, those amendments would likely require changes to the definitions of Allocated Loss Adjustment Expense(s) and Unallocated Loss Adjustment Expense(s) contained in Part 4, Section II, Rule 19 of the USRP and the definition of Medical Loss(es) contained in Part 4, Section II, Rule 22 of the USRP.

## **AMEND MISCELLANEOUS REGULATIONS FOR THE RECORDING AND REPORTING OF DATA**

The WCIRB recommends that the following revision to the Miscellaneous Regulations for the Recording and Reporting of Data become effective January 1, 2010 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2010:

- Amend Part 1, *General Provisions*, Section I, *Introduction*, Rule 2, *Effective Date*, to be consistent with the effective date of the California Workers' Compensation Uniform Statistical Reporting Plan—1995 for ease of reference.

## **AMEND CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN—1995**

The WCIRB recommends that the following revisions to the California Workers' Compensation Experience Rating Plan—1995 become effective January 1, 2010 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2010.

- Amend (i) the formula used to segregate each claim into primary and excess components to treat the first \$7,000 of each claim as primary, (ii) the credibility ("B" and "W") values based on the most current available data, and (iii) the expected loss rates based on the most current data available and an enhanced methodology.
- Amend Section III, *Eligibility and Experience Period*, Rule 1, *Eligibility Requirements for California Workers' Compensation Insurance*, to adjust the eligibility threshold from \$15,700 to \$20,100 to reflect wage inflation and the indicated change in the claims cost benchmark reflected in the filing.
- Amend the expected loss rates and D-ratios shown in Table II, *Expected Loss Rates and Full Coverage D-Ratios*, to reflect the most current data available.

The WCIRB recommends that the following revisions to the California Workers' Compensation Experience Rating Plan—1995 become effective January 1, 2011 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2011.

- Amend to (i) define the term Loss-Free Rating, (ii) provide that notice of the experience modification shall reflect the risk's Loss-Free Rating for informational purposes, and (iii) provide a summary explanation of the experience modification computation with the notice of the experience modification.

## **COSTS OR SAVINGS RESULTING FROM THE REGULATIONS**

The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, they may result in higher costs. The amendments to the California Workers' Compensation Experience Rating Plan—1995 may or may not result in costs or savings depending upon whether an employer is above or below the experience rating eligibility threshold and based upon an employer's claim experience.

## **COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Insurance Commissioner cannot determine whether or not there may be a cost increase to local agencies and school districts, but there will not be any new programs mandated on any local agencies or school districts as a result of the proposed regulations, if adopted as proposed herein. The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, they may result in higher costs to local agencies or school districts insured for workers' compensation. The amendments to the California Workers' Compensation Experience Rating Plan—1995 may or may not result in costs or savings depending upon whether an employer is above or below the experience rating eligibility threshold and based upon an employer's claim experience.

## **IMPACT ON HOUSING COSTS**

The Insurance Commissioner has determined that the proposed regulations will not have a significant effect on housing costs.

## **IMPACT ON SMALL BUSINESSES**

The Insurance Commissioner cannot determine whether or not the proposed regulations may have a significant effect on small businesses. The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurance companies. To the extent they are adopted by insurers, they may result in higher costs. The amendments to the California Workers' Compensation Experience Rating Plan—1995 may or may not result in costs or savings depending upon whether a small business employer is above or below the experience rating eligibility threshold and based upon an employer's claim experience.

## **COST IMPACT ON PRIVATE PERSONS OR ENTITIES**

The Insurance Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by workers' compensation insurance companies. To the extent they are adopted by insurers, they may result in higher costs. The amendments to the California Workers' Compensation Experience Rating Plan—1995 may or may not result in costs or savings depending upon whether an employer is above or below the experience rating eligibility threshold and based upon an employer's claim experience.

## **FEDERAL FUNDING TO THE STATE**

The matters proposed herein will not affect any federal funding.

## **NON-DISCRETIONARY COSTS OR SAVINGS**

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

## **COST OR SAVINGS TO STATE AGENCIES**

The matters proposed herein will not result in any cost or savings to State agencies, except for the State Compensation Insurance Fund.

## **REIMBURSABLE COSTS**

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

## **COMPARABLE FEDERAL LAW**

There are no existing federal regulations or statutes comparable to the proposed regulations.

## **ACCESS TO HEARING ROOMS**

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.



## **PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS**

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance  
Attn: Christopher A. Citko  
Senior Staff Counsel  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, CA 95814

(916) 492-3187  
(916) 324-1883 (FAX)  
citkoc@insurance.ca.gov

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the Insurance Commissioner's deliberations.

## **DEADLINE FOR WRITTEN COMMENTS**

All written material, unless submitted at the hearing, must be received by the Insurance Commissioner at the address, FAX number, or email address listed above no later than 5:00 PM on October 9, 2009.

## **TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE**

The Insurance Commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may be viewed or downloaded from the Regulatory Filings section of the WCIRB website ([www.wcirbonline.org](http://www.wcirbonline.org)).

## **ACCESS TO RULE-MAKING FILE, CONTACT**

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to the WCIRB's filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 300 Capitol Mall, 17<sup>th</sup> Floor, Sacramento, California 95814, between the hours of 9:00 AM and 5:00 PM, Monday through Friday.

## **AUTOMATIC MAILING**

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings, and California Government Code mailing lists.

## **ADOPTION OF REGULATIONS**

Following the hearing, the Insurance Commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the Commissioner's action.

Dated: August 24, 2009

STEVE POIZNER  
Insurance Commissioner

By \_\_\_\_\_/s/  
Christopher A. Citko  
Senior Staff Counsel